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FILED
Superior Court of California
County of Los Angeles

APR 20 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By Raul Sanchez, Deputy
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6 Attorneys for Defendants, NEA DELIVERY, LLC; AMAZON.COM, INC.; APOSTOLOS
7 MAGULIOTIS (ERRONEOUSLY NAMED AND SERVED AS APOSTOLOS MARGUIOTIS);
and AMAZON LOGISTICS, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10 11 AARON YOUNG,

12 Plaintiff,

13 v.

14 15 NEA DELIVERY, LLC; AMAZON.COM,
INC.; APOSTOLOS MARGUIOTIS, and
DOES 1 through 100, inclusive,

16 Defendants.

17 Case No. BC621762
[Assigned for All Purposes to Judge Patricia
D. Nieto, Dept. 2]

18 19 20 **DEFENDANTS AMAZON.COM INC.
AND AMAZON LOGISTICS, INC.'S
REPLY TO PLAINTIFF'S OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT**

21 22 23 [Filed Concurrently with Reply to Plaintiff's
Opposition to Defendants' Separate Statement
of Undisputed Material Facts; Reply to
Plaintiff's Separate Statement of Undisputed
Material Facts in Support of Opposition to
Motion for Summary Judgment; Objections to
Plaintiff's Evidence; and [Proposed] Order Re:
Defendant's Evidentiary Objections]

24 Date: April 27, 2018
Time: 1:30 p.m.
Dept.: 2

25 Reservation No.: 170725237206

Action Filed: May 26, 2016

Trial Date: September 11, 2018

26 27 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

28 Defendants, AMAZON.COM, INC. and AMAZON LOGISTICS, INC., (hereinafter
LEGAL:10390-0019/8969718.1

1 sometimes collectively referred to as "Amazon Defendants") hereby submit the following Reply to
2 Plaintiff's Opposition to the Amazon Defendants' Motion for Summary Judgment.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 In opposition to the Amazon Defendant's Motion for Summary Judgment, Plaintiff has
6 attempted to allege that the nature of the relationship between Amazon.com, Inc., Amazon
7 Logistics, Inc., NEA Delivery, LLC, and Apostolos Maguliotis lends itself to the inference that at
8 the time of the incident, Apostolos Maguliotis was working as an agent and/or employee of the
9 Amazon Defendants. Plaintiff's Opposition relies on the repetitive and ineffective argument that
10 the Amazon Defendants exercised some control over the means by which Apostolos Maguliotis
11 was to perform his job duties, thereby creating a triable issue of material fact as to whether
12 Apostolos Maguliotis was an agent and/or employee of the Amazon Defendants.

13 As set forth below, the Amazon Defendants can exercise a certain measure of control for a
14 definite and restricted purpose without incurring the responsibilities, or acquiring the immunities
15 of a master, with respect to the person controlled. Based on all of the facts, the only inference that
16 can be drawn is that Apostolos Maguliotis was an independent contractor rather than an employee
17 or agent of the Amazon Defendants. Accordingly, Plaintiff has failed to raise a triable issue of
18 material fact, and the Amazon Defendants' Motion for Summary Judgment should be granted.

19 **II. PLAINTIFF HAS FAILED TO ESTABLISH THAT A TRIABLE ISSUE OF**
20 **MATERIAL FACT EXISTS**

21 Plaintiff has failed to establish that a triable issue of material fact exists. The general rule-to
22 which there are numerous exceptions-is that the hirer of an independent contractor is not liable to third
23 parties for the contractor's negligence. (*Fonseca v. County of Orange* (1972) 28 Cal. App. 3d 361,
24 365.) Whether a person is an employee or an independent contractor is ordinarily a question of fact,
25 but if from all the facts only one inference may be drawn it is a question of law. (*Brose v. Union-*
26 *Tribune Publishing Co.* (1986) 183 Cal. App. 3d 1079, 1081.) Here, as in *Millsap v. Federal Express*
27 *Corp.* (1991) 15 Cal.3d 600, 674, the only inference which can be raised from the facts is that
28 Apostolos Maguliotis was at all times, and acted at all times, as an employee of NEA Delivery, LLC

1 and an independent contractor with regard to Amazon.com, Inc. and Amazon Logistics, Inc.

2 The most significant factor in determining the existence of an employer-independent
3 contractor relationship is the right to control the manner and means by which the work is to be
4 performed. (*Millsap v. Fed. Express Corp.* (1991), 227 Cal. App. 3d 425, 431.) If control may be
5 exercised only as to the result of the work and not the means by which it is accomplished, an
6 independent contractor relationship is established. *Id.* at 431. The Court in *Millsap* went further,
7 stating that, "We do not view the facts that NCE instructed Pence to 'be careful' or that NCE
8 demanded that he show that he in fact delivered the packages by submitted confirmation forms, as
9 indicating that NCE exercised the type of control over Pence's actions as to make him its
10 employee. *Id.* at 432. Nor do we see that any of the other facts asserted by NCE raise a triable
11 issue as to whether Pence was anything but an independent contractor compensated on a
12 piecemeal basis for deliveries made. *When one person is performing work in which another is
13 beneficially interested, the latter is permitted to exercise a certain measure of control for a
14 definite and restricted purpose without incurring the responsibilities or acquiring the immunities
15 of a master, with respect to the person controlled.* (emphasis added.) *Even one who is interested
16 primarily in the result to be accomplished by certain work is ordinarily permitted to retain some
17 interest in the manner in which the work is done without rendering himself subject to the peculiar
18 liabilities which are imposed by law upon an employer.*" (emphasis added.) (*Bohanon v. James
19 McClatchy Pub. Co.* (1936) 16 Cal.App.2d 188, 199; and see, also, *Fleming v. Foothill-Montrose
20 Ledger* (1977) 71 Cal.App.3d 681, 686.)

21 A similar example arose in *Bohanon v. James McClatchy Pub. Co.* (1936) 16 Cal.App.2d
22 188, 199, wherein a newspaper deliverer was deemed an independent contractor notwithstanding
23 that the newspaper company defined his route; prohibited him from distributing any other
24 newspaper or periodical within his designated territory; demanded that he deliver the papers at the
25 earliest possible time; prohibited him from selling, assigning or transferring any part of his route
26 to another; use his best efforts to increase circulation; or follow a number of other like directions
27 or prohibitions.

28 As stated above, plaintiff's Opposition exclusively relies on the repetitive and ineffective

1 argument that the Amazon Defendants exercised control over some of the means by which Apostolos
2 Maguliotis was to perform his duties. Among this control, was the fact that Apostolos Maguliotis
3 showed up to work at a warehouse facility not owned by NEA Delivery, LLC, used the DORA
4 handheld scanning device, and delivered packages to customers containing goods ordered from
5 Amazon. Simply put, the fact that Amazon Logistics, Inc. exercised a certain measure of control to
6 ensure the end result of Apostolos Maguliotis' work (e.g. the delivery of packages) does not create a
7 triable issue of material fact. The bottom line is that Apostolos Maguliotis was employed by NEA
8 Delivery, LLC as a delivery driver and he worked out of the distribution center known as DLA-1 in
9 Inglewood, California, where he would retrieve his packages for delivery and begin his delivery route.
10 The delivery routes for NEA Delivery, LLC delivery drivers were set by Amazon Logistics, Inc., but
11 the drivers could elect to take different delivery routes on their own volition. Per its ordinary course
12 of business, and its custom and practice, NEA Delivery, LLC screened, hired, trained, employed, and
13 paid Apostolos Maguliotis to work as a delivery driver. NEA Delivery, LLC paid Apostolos
14 Maguliotis as a delivery driver on an hourly basis, based on the time he would clock-in and clock-out.
15 At all times, and on September 27, 2015, NEA Delivery, LLC had its own liability insurance to cover
16 the negligent acts of its employees, which included, but was not limited to, any negligent acts by
17 Apostolos Maguliotis.

18 It is abundantly clear that the Amazon Defendants should not be named parties in this litigation
19 and that Apostolos Maguliotis was an employee of NEA Delivery, LLC at the time of the incident that
20 is the subject of this incident, and certainly not an employee or agent of the Amazon Defendants.
21 Therefore, the Amazon Defendants' Motion for Summary Judgment should be granted.

22 **III. THE DECLARATION OF RICHARD NYHAN CONTAINS ADMISSIBLE EVIDENCE**
23 **THAT PROPERLY CHARACTERIZES THE RELATIONSHIP BETWEEN THE**
24 **PARTIES**

25 The declaration of Richard Nyhan contains admissible evidence that properly characterizes
26 the relationship between the Defendants in this case. With regard to Motions for Summary
27 Judgment, California *Code of Civil Procedure* § 437c(b)(1) states, in pertinent part, as follows:

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1 "The motion shall be supported by affidavits, *declarations*,
2 admissions, answers to interrogatories, depositions, and
3 matters of which judicial notice shall or may be taken."

4 Throughout Plaintiff's Opposition, Plaintiff repeatedly claims that the declaration of
5 Richard Nyhan in Support of the Amazon Defendants' Motion for Summary Judgment is
6 inadmissible. However, Plaintiff fails to establish valid legal grounds as to why the declaration is
7 inadmissible, other than invalid arguments that Mr. Nyhan lacks personal knowledge and there is
8 insufficient foundation. The reality, which cannot be refuted, is that Mr. Nyhan drafted his
9 declaration based on his own personal knowledge of the relationship between NEA Delivery,
10 LLC, the Amazon Defendants, and Apostolos Maguliotis, and his experience as the General
11 Manager of NEA Delivery, LLC for over three years. As the General Manager of NEA Delivery,
12 LLC, Mr. Nyhan handles employee oversight and development, oversees recruiting, and works
13 with NEA Delivery, LLC's professional employer organization. In addition, he is responsible for
14 ensuring packages are delivered as scheduled, ensuring the payroll is up-to-date, ensuring the fleet
15 vehicles are up-to-date, and reviewing metrics. Moreover, as part of his job responsibilities, he
16 develops account management strategies and is in charge of the account management for Amazon
17 Logistics, Inc. and is privy to all contract negotiations and contractual relations between NEA
18 Delivery, LLC and Amazon Logistics, Inc. He is familiar with the contractual relationship
19 between NEA Delivery, LLC and Amazon Logistics, Inc., both currently, and at all times relevant
20 to this lawsuit. The legal grounds upon which Plaintiff attempts to refute the evidentiary
21 legitimacy of Mr. Nyhan's declaration are improper. Accordingly, Mr. Nyhan's declaration
22 contains valid, admissible evidence and the information contained therein should not be stricken.

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IV. CONCLUSION

2 Based upon the foregoing, the Amazon Defendants respectfully request this Court grant their
3 Motion for Summary Judgment or, in the alternative, Summary Adjudication and enter judgment in
4 their favor and against Plaintiff.

5 | DATED: April 20, 2018

WOOD, SMITH, HENNING & BERMAN LLP

By:

BRIAN L. HOFFMAN
JAMES A. CHORTANIAN

Attorneys for Defendants, NEA DELIVERY, LLC; AMAZON.COM, INC.; APOSTOLOS MAGULIOTIS (ERRONEOUSLY NAMED AND SERVED AS APOSTOLOS MARGUIOTIS); and AMAZON LOGISTICS, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 5000 Birch Street, Suite 8500, Newport Beach, CA 92660.

On April 20, 2018, I served the following document(s) described as **DEFENDANTS AMAZON.COM INC. AND AMAZON LOGISTICS, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

**Eric Bryan Seuthe, Esq.
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BY FEDEX: I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in an envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 20, 2018, at Newport Beach, California.

Christopher L Leong